

MONTANA LEGISLATIVE HISTORY

Chapter 262 19 77

Bill H 759 S _____

Original bill & history ☒ C

H. Committee on *Judiciary Subcommittee*
on Montana Water

S. Committee on *Local Govt*

Hearing Date(s) 2/15 ☒ C

Hearing Date(s) 3/7 ☒ C

2/18 ☒ C

3/10 ☒ C

Judiciary 2/19 ☒ C

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Date Out _____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 *House* BILL NO. *759*
 2 INTRODUCED BY *Mont Water Sub. Committee Day Chairman*
 3 REQUESTED BY
 4 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT AN ACT TO AMEND SECTION
 7 89-3504, R.C.M. 1947, TO PROVIDE THAT THE LOCAL POLITICAL
 8 SUBDIVISION SHALL REIMBURSE THE DEPARTMENT OF NATURAL
 9 RESOURCES AND CONSERVATION FOR ITS COSTS IN ADMINISTERING
 10 AND ENFORCING FLOODPLAIN AND FLOODWAY MINIMUM STANDARDS
 11 WHERE THE POLITICAL SUBDIVISION HAS FAILED TO DO SO AND TO
 12 CLEARLY AUTHORIZE A POLITICAL SUBDIVISION TO ADOPT LOCAL
 13 LAND-USE REGULATIONS IN DESIGNATED FLOODPLAINS AND FLOODWAYS
 14 AFTER THE STATUTORY 6-MONTH DEADLINE."
 15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 Section 1. Section 89-3504, R.C.M. 1947, is amended to
 18 read as follows:
 19 "89-3504. Program for delineation of floodplains and
 20 floodways -- land-use regulations -- payment of department
 21 expenses by political subdivision. (1) (a) The department
 22 shall initiate a comprehensive program for the delineation
 23 of designated floodplains and designated floodways for every
 24 watercourse and drainway in the state. It shall make a study
 25 relating to the acquiring of flood data and may enter into

1 arrangements with the United States geological survey, the
 2 United States army corps of engineers, or any other state or
 3 federal agency for such acquisition.
 4 (b) Before the board establishes by order a designated
 5 floodplain or a designated floodway, the department shall
 6 consult with the affected political subdivisions.
 7 Consultation shall include, but not be limited to, the
 8 following:
 9 (i) specifically requesting that the political
 10 subdivisions submit pertinent data concerning flood hazards,
 11 including flooding experiences, plans to avoid potential
 12 hazards, estimates of economic impacts of flooding on the
 13 community, both historical and prospective, and such other
 14 data as considered appropriate;
 15 (ii) notifying local officials, including members of
 16 the county commission, city council, and planning board, of
 17 the progress of surveys, studies, and investigations and of
 18 proposed findings, along with information concerning data
 19 and methods employed in reaching such conclusions; and
 20 (iii) encouraging local dissemination of information
 21 concerning surveys, studies, and investigations, so that
 22 interested persons will have an opportunity to bring
 23 relevant data to the attention of the department.
 24 (2) When sufficient data have been acquired by the
 25 department, the board shall establish, by order, after a

1 public hearing, the designated floodplain within which a
 2 political subdivision may establish land-use regulation.
 3 When sufficient data have been acquired, the board shall
 4 establish, by order, after a public hearing, the designated
 5 floodway within which a political subdivision may establish
 6 land-use regulation. These designations shall be based upon
 7 reasonable hydrological certainty. When the designated
 8 floodplain or the designated floodway has been established,
 9 the department shall furnish this data to officials of the
 10 political subdivision having jurisdiction over those areas
 11 together with a map outlining the areas involved, a copy of
 12 this act, adopted rules of the board, and suggested minimum
 13 standards adopted by the board. These standards and rules
 14 shall reflect gradations in flood hazard based on criteria
 15 as outlined in section 89-3507(2). In adopting these
 16 standards, and rules, and--regulations, the board shall
 17 consider local input from the affected political
 18 subdivisions. The department shall record all designated
 19 floodplains or designated floodways established by the board
 20 in the office of the county clerk and recorder of each
 21 county in which those floodplains or floodways are found.
 22 The board may alter the floodplains or floodways at any
 23 later time, by order, after a public hearing if a
 24 re-evaluation reevaluation of the then available flood data
 25 warrants warrant it. Notice of a hearing or order of the

1 board establishing or altering the floodplains or floodways
 2 shall be given by publishing the notice once each week for
 3 ~~three--(3)~~ consecutive weeks in a legal newspaper published
 4 or of general circulation in the area involved, the last
 5 publication of which shall be not less than ~~ten--(10)~~ days
 6 prior to the date set for the hearing or the effective date
 7 of the order.

8 (3) Upon transmittal of the floodplain information to
 9 officials of a political subdivision, the political
 10 subdivision has ~~six--(6)~~ months from the date of transmittal
 11 to adopt land-use regulations which meet or exceed the
 12 minimum standards of the board. If within the ~~six--(6)~~-month
 13 6-month period the political subdivision has failed to adopt
 14 the land-use regulations, the department shall enforce the
 15 minimum standards within the designated floodplain or the
 16 designated floodway as established by the board under
 17 subsection (2) of this section, and no artificial
 18 obstruction or nonconforming use ~~shall~~ may be established by
 19 any person within the designated floodplain or the
 20 designated floodway, unless specifically authorized by the
 21 board.

22 (4) The department shall maintain a record of all its
 23 administrative costs to administer and enforce the minimum
 24 standards within the designated floodplain or floodway, and
 25 the political subdivision having jurisdiction over the area

1 shall reimburse the department for such costs after billing
 2 by the department. A political subdivision which has failed
 3 to adopt land-use regulations which meet or exceed the
 4 minimum standards of the board within the 6-month period may
 5 subsequently adopt such regulations and, if approved by the
 6 board, they shall be effective within the designated
 7 floodplain or floodway and administered and enforced by the
 8 political subdivision.

9 (5) When necessary for compliance with federal flood
 10 insurance requirements, the board may shorten the ~~six-(6)~~
 11 ~~month 6-month~~ period upon notification to the political
 12 subdivision and publication of a notice thereof in a
 13 newspaper of general circulation in the affected area once a
 14 week for ~~three-(3)~~ consecutive weeks."

-End-

STATE OF MONTANA

REQUEST NO. 608-77

FISCAL NOTE

Form BD-15

In compliance with a written request received March 8, 19 77, there is hereby submitted a Fiscal Note for House Bill 759 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 758 provides that local political subdivisions shall reimburse the Department of Natural Resources and Conservation for its costs in administering and enforcing floodplain and floodway minimum standards where the political subdivision has failed to do so.

FISCAL IMPACT - STATE:

None

FISCAL IMPACT - LOCAL:

Ten (10) counties have designated floodplains within their jurisdiction. Currently, eight (8) of the ten (10) counties are financing the administration and enforcement of floodplain regulations. There will be additional costs to those counties that do not enforce these regulations; however, it is difficult to estimate those counties that will be charged for enforcement and how much the charge will be.

Richard L. Dwyer
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-11-77

March 11, 1977

STANDING COMMITTEE REPORT
Senate Committee on Local Government

That House Bill No. 759, third reading, be amended as follows:

1. Amend title, line 6.
Following: "ENTITLED: "AN ACT"
Strike: "AN ACT"
2. Amend title, lines 7 through 11.
Following: "To"
Strike: lines 7 through 11 in their entirety.
3. Amend page 1, section 1, lines 20 through 21.
Following: "regulations"
Strike: "--payment of department expenses by political subdivision"
4. Amend page 4, section 1, lines 22 through line 2 on page 5.
Following: "(4)"
Strike: lines 22 through "department." on line 2 on page 5

NO.	AUTHOR	SUBJECT	REFERRED TO
		PUBLIC EDUCATION.	
745	GERKE	TO CONFORM THE TERMINOLOGY IN THE LAWS RELATING TO FIREMEN AND POLICE RETIREMENT AND DEATH AND DISABILITY BENEFITS TO THE PROPOSED LOCAL GOVERNMENT CODE TERMINOLOGY.	GOVERNOR SIGNED 4/26/77 (CH. 489)
746	E. GUNDERSON, DUSSAULT, ET AL	TO REQUIRE THAT A JOB MARKET SURVEY BE CONDUCTED BEFORE A NEW VOCATIONAL EDUCATION COURSE IS ESTABLISHED.	KILLED IN EDUCATION 2/18/77
747	PAGE	TO DIRECT THE STATE BOARD OF INVESTMENTS TO INVEST AT LEAST ONE-QUARTER OF CERTAIN FUNDS IN QUALIFIED MONTANA MORTGAGES.	SENATE KILLED IN BUSINESS & INDUSTRY 3/11/77
748	PAGE	AN ACT TO ALLOW THE EXTENSION OF ELECTRIC SERVICE ACROSS ALLEYS UNDER CERTAIN CIRCUMSTANCES.	SENATE KILLED IN LOCAL GOVERNMENT 3/28/77
749	E. GUNDERSON, WALDRON, ET AL	TO COMPENSATE THE VICTIMS OF MOTOR VEHICLE ACCIDENTS CAUSED BY UNINSURED MOTORISTS WHO CANNOT PAY JUDGMENTS AGAINST THEM.	KILLED IN JUDICIARY 2/21/77
750	VINCENT, MELOY	TO APPROPRIATE \$25,000 TO THE CONSUMER COUNSEL AND THE PUBLIC SERVICE COMMISSION TO INSTITUTE REVISED ENERGY RATE STRUCTURES.	KILLED IN BUSINESS AND INDUSTRY 2/24/77
751	WALDRON	TO PROHIBIT A PERSON CONVICTED TWICE IN 3 YEARS OF ISSUING A BAD CHECK FROM MAINTAINING A CHECKING ACCOUNT IN THE STATE OF MONTANA.	KILLED IN JUDICIARY 2/18/77
752	HUENNEKENS, FRATES, ET AL	TO PROHIBIT, BY ANYONE OTHER THAN THE STATE, THE PRACTICE OF CHARGING CITIZENS FOR THE RIGHT TO HUNT OR FISH.	KILLED IN FISH AND GAME 2/19/77
753	BRADLEY, MELOY, KINBLE	TO PROVIDE FOR THE LABELING OF APPLIANCES FOR ENERGY EFFICIENCY.	NATURAL RESOURCES 2/10/77
754	MELOY	TO PROVIDE FOR THE COAL TAX TRUST FUND WITHIN THE UNIFIED INVESTMENT PROGRAM.	SENATE TAXATION 4/5/77
755	CONROY, DAY, LIEN	TO REVISE THE LAWS RELATING TO THE TAXATION OF LIVESTOCK.	GOVERNOR SIGNED

NO.	AUTHOR	SUBJECT	REFERRED
			4/4/77 (CH. 260)
756	FRATES, HOLMES, ET AL	TO REQUIRE TIMELY PAYMENTS TO RECIPIENTS OF SUPPLEMENTARY PAYMENTS AND MEDICAL ASSISTANCE FROM THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.	SENATE KILLED IN FINANCE CLAIMS 4/14/77
757	TAXATION COMMITTEE-LIEN, SMITH	TO RAISE THE PER CAPITA LICENSE FEE ON SHEEP.	GOVERNOR SIGNED 4/4/77 (CH. 26)
758	SOUTH, RAMIREZ	TO AVOID JURISDICTIONAL CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS.	GOVERNOR SIGNED 4/29/77 (CH. 53)
759	MONTANA WATER SUB-COMMITTEE	TO REIMBURSE THE DEPARTMENT OF NATURAL RESOURCES FOR ITS COSTS IN ADMINISTERING FLOODPLAIN AND FLOODWAY MINIMUM STANDARDS.	GOVERNOR SIGNED 4/4/77 (CH. 26)
760	ELLISON, COX	TO PROVIDE FOR THE PROTECTION OF PERSONS DEALING WITH CEMETERY OR MAUSOLEUM-COLUMBARIUM CORPORATIONS.	GOVERNOR SIGNED 4/19/77 (CH. 45)
761	HARRINGTON, KINBLE, RAMIREZ	TO PERMIT THE FORMATION OF NON-PROFIT CORPORATIONS TO PROVIDE PREPAID LEGAL SERVICES.	SENATE JUDICIAL HEARING
762	BRADLEY, SOUTH	TO ESTABLISH NECESSARY ENERGY EMERGENCY POWERS FOR THE GOVERNOR.	GOVERNOR SIGNED 5/13/77 (CH. 57)
763	RAMIREZ, MELOY	AN ACT TO REVISE THE ATTACHMENT LAW.	GOVERNOR SIGNED 4/5/77 (CH. 29)
764	RAMIREZ, SIVERTSEN	TO GENERALLY REVISE THE LAWS RELATING TO AUCTION SALES.	GOVERNOR SIGNED 4/4/77 (CH. 26)
765	DRISCOLL	TO GENERALLY REVISE THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM WITH RESPECT TO QUALIFIED TAX STATUS.	GOVERNOR SIGNED 4/7/77 (CH. 3)
766	HOLMES, DUSSAULT,	TO APPROPRIATE MONEY TO THE DEPARTMENT OF INSTITUTIONS FOR	KILLED APPROPRIATE

January 6, 1977 Room 436

Chairman Day called the meeting to order at 8:30 a.m. This Committee is newly formed and the members are the following representatives and staff:

Representative Bill Baeth	Representative Ora Halvorson
Representative Esther Bengston	Representative William Hand
Representative Aubyn Curtiss	Representative Gary Kimble
Representative E. Dassinger	Representative Earl Lory
Representative Ann Mary Dussault	Representative James Mular
Representative Orval Ellison	Representative Dennis Nathe
Representative Jack Ramirez	
Representative Willie Day, Chairman	
Representative John Scully, Vice-chairman.	

Diana Dowling, Staff Attorney	Jim Gardner, Research Attorney
Greg Morgan, Lobbyist for Montana Bar Association.	Donna McDuffie, Secretary.

After introduction of representatives and staff, Chairman Day made the following announcements:

Water Sub Committee meetings are tentatively set for Tuesday and Thursday, 10-12 a.m., room 436.

The Water Sub Committee will honor the same type rules and govern under the same jurisdiction as the judiciary, when testimony is involved.

Procedure will be posted on the door.

You can ask questions and offer opinions, however, anyone wishing to testify, must sign in and state their name, residence, pro or con and who they represent.

All questions must come from the committee members.

No one testifying may ask questions.

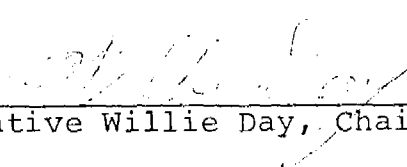
There will be no smoking by other than committee members and staff.

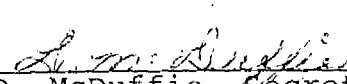
At regular meetings, there must be a quorum present. If you cannot attend, contact committee secretary. Fifteen members, quorum eight.

General discussion followed. Scully suggested contacting Judge Leslie and Charles Bowman in regard to water presentations.

It was planned that Thursday and Friday (confirmation later today on the floor) there will be public meetings in regard to water legislation. Purpose: public input.

Meeting adjourned 9:30 a.m.


Representative Willie Day, Chairman


D. McDuffie, Secretary

Select Sub Committee on Water.

January 11, 1977 rm. 436

Water Sub Committee Members and Chairman met January 11, 1977, Rm. 436, 10-10:45 A. M. A quorum was present. Chairman Day asked Rep. Scully to give a general outline for the Water Hearings Thursday and Friday.

The Water Hearings will be open to the public. They will be held in the House Chambers 7 to 10 P. M. They should be a time for hearing complaints, observing, listening, suggestion gathering. In other words, this will be a sounding board for gathering information and then meeting with committee members and choosing priorities for the end result.

It was felt that Thursday, the Committee should take notes and ask questions. There will be speakers from different agencies representing their interests and bringing attention to the various ideas and concerns.

General discussion followed:

Friday the meeting will be open to more and specific water detail from various State and Federal Agencies.

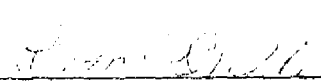
Anyone wanting to testify at these meetings will be asked to sign in, name, residence, approximate time needed for presentation. The formal hearing procedure will prevail. Repetition to be avoided if at all possible during the hearings.

After the two water hearings, a sub committee should be appointed to meet with the secretary and condense the minutes to a point of interest. Also, at this time and place we will be able to see if there are some areas that need to be addressed immediately.

It was felt and agreed that there wouldn't be an open time of questioning from the floor.

Meeting was adjourned at 10:45. A. M.


Rep. Willie Day, Chairman


D. McDuffie, Sec.

Select Sub Committee on Water.

WATER SUB COMMITTEE ON JUDICIARY

HEARING

JANUARY 13, 1977 7:00 P. M.

Representative John Scully, Chairman of the House Judiciary Committee opened this public hearing held in the House Chambers by explaining that the Water Sub committee was a sub committee of the Judiciary Committee, and made up of a select membership of the House. He said that most individuals had been chosen because of their knowledge or interest in water problems in the state, but that they had purposely put several unexperienced people on the committee in an effort to attain a balance. He said that the purpose of the meeting was to give concerned citizens a chance to tell the committee what they felt was wrong with the systems in connection with water, and what they thought might be possible solutions. He asked for their views, suggestions, experiences and asked that criticisms and suggestions be made in a positive manner.

Scully introduced Chairman Willie Day who in turn introduced Sub Committee Members: Rep. Wm. Hand, Dillon; Rep. Orval Ellison, McLeod; Rep. Esther Bengston, Shepherd; Rep. Earl Lory, Missoula; Rep. Jack Ramirez, Billings; Rep. Audrey Roth, Big Sandy; Rep. Dennis G. Nathe, Redstone; Rep. E. N. Dassinger, Forsyth; Rep. James T. Mular, Butte; Rep. Ora J. Halvorson, Kalispell; Rep. Ann Mary Dussalt, Missoula; Rep. Aubyn A. Curtiss, Fortine; Rep. Wm. R. Baeth, Libby; and Rep. Gary Niles Kimble, Missoula. Also James Gardner, Research Attorney and Donna McDuffie, secretary.

Chairman Day set the basic tone for the hearing, said that the intent of the committee was to address some water matters that have been avoided in the past by other legislatures. He invited everyone to the hearing the following night. Chairman Day then invited comments from the floor.

Archibald H. Allen, Livingston, Montana - Rancher.

He said that he would like to bring to the attention of this group that he was unhappy with Title 9 of the Constitution. He quoted some material from "Montana Water Tomorrow" (MSU).

Russell W. Sime, Bozeman, Montana - Rancher. Chairman, Gallatin Cons. Dist.

He said that he was involved in SB 310 (1975 session), and was presently concerned about water priorities and placed them as follows: 1. urban, 2. agriculture, 3. industry and 4. recreation. He was concerned about water reservations that the Department of Fish and Game and other state agencies have dealt with recently. He expressed the concern that if reservations are approved it will take from agriculture. Agriculture has to look more toward irrigation. Retain water in Montana for Montana.

He would also like to see updating of the water adjudication process. He felt that Montana industry should be protected at no cost to the tax payer. He felt that adjudication was necessary for industry, but that there should be no cost to farmers. He said he was also con-

cerned about Public Law 92-500, and about Federal Law 404, Phase 2, which he said would allow the Federal government title control through the Corp. of Army Engineers over activities, and would cause a conflict with SB310 (1975 session).

Ann M. Howe, Livingston, Montana - Rancher.

Mrs. Howe stated that Montana is standing on a threshold of opportunity or a threshold of stagnation. "We can make this state nothing but a playground, or with forethought and planning, we can make this a place where our children and grandchildren can make a decent living and enjoy this beautiful land". She also expressed concern over agencies having too much control. She felt priorities should be set before the moratorium is over. Priorities were 1. domestic, 2. agriculture, 3. industry and energy, 4. recreation. She stated that Montana was not in a position to seal itself off from development. She said that a dangerous precedent of bureaucratic control could be set for the Department of Natural Resources if they were allowed to set priorities, in-stream flows, etc.

Herb Mobley, Ashland, Montana - Farmer, irrigator. Tongue River area.

He said his major concerns were coal problems related to water. One of the major concerns was the fact that the Burlington Northern is proposing the building of a branch line across his land from Decker, Montana to Miles City, Montana or from Decker to Coalstrip. He proposed having coal shipped to other states by slurry pipeline or changing the Montana water laws to make slurrying a beneficial use. He said that in about ten years the volume of coal to be shipped would be greater than the railroads could handle.

Vernon Westlake, Bozeman, Montana - Rancher.

His main concern was relative to the expiration of the federal interbasin transferral moratorium expiring in 1978. This was a ten year moratorium put on all interbasin transferral of water rights in 1968 to give the states a chance to develop their water for use within the state. He suggested that all water rights recorded in the county courthouses be proven. This would be proof of possession. Possession being nine points of the law. He also suggested that anyone contesting water rights or filing for additional water rights be required to carry the burden of proof and stand all costs involved.

Jess Kilgore, Three Forks, Montana - Rancher.

He spoke on the importance of agriculture. Water for agriculture and the importance of irrigatable land and the production from that land to the world food supply. He also expressed his opposition to using water for slurrying coal out of the state of Montana. He said that water for irrigation and agriculture is the least polluting use and contributes to a balanced environment.

Tom Asay, Forsyth, Montana - Farmer, irrigator.

He read prepared statements from his conservation district concerning their thoughts and ideas about water in Montana. He said

the most pressing problems were as follows: ownership of water, and the adjudication process must be clarified, that the moratorium should be extended to facilitate the due process of law, and that we should be concentrating on the off-stream storage of water on tributaries of the Yellowstone River. (on behalf of the Rosebud County Conservation District).

He said that he personally felt that the development of water resources must be our first concern. Precious water (taking topsoil with it) was leaving the state, and advocated storing water, especially during the spring runoff, and putting it back in the flow or using it. Also commented on the preservation of stream banks. If we held the June water, that our topsoil runoff would be stabilized.

He read from a pamphlet prepared by C. C. Bowman (MSU) and W. W. Leslie (Judge, Bozeman, Montana).

Micky W. Jackson, Willow Creek, Montana.

He said that the Jefferson River had a high water problem and that he would like to see a development on the upper Jefferson to retain water for use later in the summer. He talked of the needs of the people and the greatness of the state.

Arnold Olsen, Butte, Montana - Federal District Judge.

Mr. Olsen is quite knowledgeable in water law of the state and country as a whole. He said that the same things have always been said at each water meeting he has participated in, which is to keep Montana water for Montana. He outlined the basic water laws of the past and the present, but that the world finally settles to "First in Time is First in Right" if the water is appropriated for a beneficial use. He said that we watch water leave the state all year, and that beneficial use in most instances relates to flood control, agriculture, urban use, irrigation. He said that slurring coal was a very grave waste of water.

He said that the moratorium is ineffective, because when it is over, there will be someone downstream who will own Montana water. He stated that the Canyon Ferry Dam solved the problem in the upper Missouri area. He said that the Montana Power Company had a prior right on the Beaver Creek, and the government had to build a dam.

He said that the Yellowstone was not even appropriated in Billings for urban uses, and suggested that the Yellowstone River be diverted somewhere near Livingston and that it be basined for urban and industrial use. He said that the Clarks Fork produces about 15,000 acre feet, and Montana only gets use of it through two power dams. He said that people in other states will divert the water and use it south of us.

He said that we could look to the fact that water is going to waste unless we think up beneficial uses for it. He said that energy and the development of energy is a necessity today.

He felt that the Legislature could authorize the building of dams, and that the last dam in Montana was built when Bonner was Governor.

He said that our own Water Resources Board must take on these challenges, and that we can't do a thing by talking. He said that we have got to hire engineers and have a progressive water board. He suggested that we have engineers design dams and present their designs to the Water Board.

He said that he believed that without storage that there wasn't enough water to satisfy adjudication in any stream or river in Montana. He said that it was imperative that we have a plan, then have a Legislature that would carry out that plan.

He mentioned that we should look back in time, depression, etc., and the courage of the people then, the wealth of today, and added "Montana can handle the challenge".

James Paugh, Bozeman, Montana. Montana Farm Bureau and State Natural Resources Committee.

He read a passage from a Bureau Policies booklet of 1977. He said that when water rights are readjudicated according to the new Water Rights law, measurement will go from miners inches to the amount of time and the amount of water to be more specific.

He said that the Farm Bureau feels that if the water rights are measured this way instead of in miners inches, the farmers might be deprived of some of their use, because it would not be considered beneficial. He was afraid farmers would be deprived of water, especially for future use. He advocated that water continue to be measured in miners inches.

He said that he believed that the Water Board should guarantee that the new water users should cause no problems or cost to people who have an older right. He said that water permits were given in haste and that problems often were caused for old users, necessitating expenditures for attorneys and court costs.

He believed that individual water rights, both surface and ground water should be supervised by district courts, as it was before the Water Use Act of 1973. He also felt the records ought to be kept in the local county. He suggested the implementation of a plan where personnel would go into the field and to the County Clerk and Recorder's offices to get the job done.

He said that the State of Montana should help the people to determine water rights instead of forcing them to do it themselves.

He said that industry should never interfere with the agricultural use of water. He said that irrigation was a "sometime" use and that industry would use water all year round, and must have some type of storage facilities. He said that he believed priorities for water should be as follows: 1. domestic, 2. agriculture, 3. urban, 4. industry, 5. recreation. Water should be reserved for agricultural use primarily.

He also said that he expected the Legislature to require the State Department of Natural Resources to quantify water reservations for Indians.

He was disturbed that cities and towns could reserve water for future needs. He wondered how we could extend reservations to the future and leave Indian reservations and other lands uncouncted.

D. W. Deschamps, Missoula, Montana, Environmental Quality Council.

Priorities: 1. urban, 2. agriculture, 3. industry.

He also stated that the sub committee should look into the problem that adjudicated water users, water rights, that are a hundred years old, having to stand court costs when the water is adjudicated.

Roger Carey, Fort Benton, Montana.

He mentioned the cost of field and irrigation services. He said that he wanted the government to bear some of the costs for the change that will be taking place.

David Maclay, Lolo, Montana - Rancher. Bitterroot Water, Inc.

The main interests of that organization being water and the beneficial use thereof.

He read a letter from Stan Cooper, Bitterroot Water, Inc. suggesting that six to ten Montana State University advanced law students spend their summer internships working in courthouses to establish water rights. He said he felt that maybe student help could help get the job done. He said that adjudication on the Bitterroot tributary has been slow and expensive so far.

He expressed concern that attorneys, especially young attorneys really didn't understand the water problems. He also said that there is great need for attorneys who do understand water relative to the adequate interpretation of the Department of Natural Resources and the new constitution.

W. G. Gilbert, Dillon, Montana - Rancher, Lawyer.

He said that just prior to the enactment of the Water Use Act of 1973 there was a group in the southwestern part of the state who had had some experience in water rights and who addressed themselves to the proposed Water Use Act. In the instances that they could, they took out harmful portions, portions harmful to the people in the state and to potential water users. He said the bill was submitted and heard around the state, and he attended one of the meetings on it in Bozeman, Montana. He said that he met with members of the Department of Natural Resources in an effort to work something out to reach compromises.

He said that at no time from the time we worked on the proposed bill handed to the Legislative committee until the bill was signed by the Governor was the bill ever written so that we could go to it and find out what the law was. From the time he worked on it and worked out compromises to the time it was signed, it was changed drastically. So when he got it, it was a complete surprise. He said that some promises were not kept, especially with the problem of field irrigation (sprinkling systems). He said that sprinkling systems used about half of the amount of water that flood irrigating uses, and so double the land could be covered with the same amount of water.

To our people, he said, who are putting in their irrigation systems, without following the provisions of the Water Use Act, it means that they are breaking the law. Our County Attorney has received no complaints yet.

Water laws are very complex, he stated.

He agreed with Judge Olsen, dams should be built for and by the State. He said water was a commodity that could be reused.

He said that most of the laws that had been written on water were written 60 to 100 years ago, and that they were hard to understand and apply.

He said that there were many places where the water could be diverted and stored rather than using up your energy making a lot of laws. Water laws are nice and use is nice, but the changes in the use made in the intervening period may have more importance, he stated.

He asked that the committee take great thought in what they are doing. Water rights are property rights and if property is taken from people, without compensation, there will be law suits.

Leonard Sargent, Corwin Springs, Montana - Rancher.

He spoke about water reservations on the Yellowstone, difficult problem. Montana must show that it has a legitimate use for the water in the state or lose it.

He felt there was no need for the conflict between departments over the water. While we're waiting to see what we are going to do, someone else will get control of the water.

He said that citizens of Montana must establish reservations now so that industry does not take over the water, or agriculture will be fighting over leftovers.

He said that he believed an effort must be made in this state to preserve our clean air, water, agriculture and way of life. Common goals must be recognized.

Fran Mertes, Glendive, Montana - Dawson & Richland Counties, Chamber of Commerce. John Kubish, McCone & Richland County Cons. Dists.

They felt, as already stated, water was the basic resource and base resource for all our other resources. He said that coal development and agricultural production all needed water to function and to survive. He stated that water was a base resource that we should not be in a hurry to have something done about, and advocated an extension of the moratorium so that everything can be done with planning, not haste.

He said that conservatism and reservation was waste. He said that past legislature had passed the 1973 water law reservation concept, the renewable resource concept to retain water and was afraid all these programs would drop by the wayside. He said he believed that without use, we would not be able to prove that we need the water. He

asked that the Renewable Resource Program be continued to help agriculture with the costs involved in developing alternate energy sources.

He said that the water permitting system in force is lagging behind because of the unavailability of help in helping the farmers. He requested again that the moratorium be extended to give time for all the legislation passed in the 1975 session to be implemented.

He said that he believed if agriculture did not make its claim for water now, that there were plenty of others who would. He said that if the moratorium is lifted in three months it would mean a loss of water for agriculture, because agriculture had not yet determined the amount of water it would need in the future. He said that agriculture would need more time to make requests for water because industry had the resources to afford water sites, the staff to make adequate requests.

He was also concerned with the present system of stream adjudication.

Mike stoltz, Dawson County Conservation District.

He briefly mentioned the environmental impact statement drafted by the Department of Natural Resources and going through hearings in the state. He said in the environmental impact statement a "no act" alternative was discussed which assumes a high energy development level. He said that this would leave too little acreage as irrigable. He said that 18,000 irrigable acres were located in Dawson County, which couldn't be developed immediately, and said that they needed the time that the moratorium would give for adequate water reservation. He stated that in Dawson County, industry and business would take a larger share of the water than agriculture.

Mark Steffen, Cardwell, Montana - Jefferson Valley Farmers.

He described the farmers problems with irrigation and water use, during dry spells, etc. He said he was interested in water rights in connection with new state and Federal dams, and the rights problem it would create.

Mr. Norlan, Manager, Buffalo Rapid Irrigation Project.

He said that he supported the concept of holding water for the future and did not want industrial applications to have priority over agriculture.

Wayne Haas, Irrigation Farmer - Yellowstone Basin Water Users Assoc.

He said he supported an extension of the moratorium to give the Department of Natural Resources the time to act on applications and set up a priority system, which he also supports.

Norman Starr, Big Timber, Montana - Western Environmental Trade Assoc.

He said that WETA was an organization of labor unions, industries, businesses and agriculture whose goal is a balanced approach to environmental objectives and economic needs. He said he thought the three-year moratorium wasn't used effectively. He said that we had all these laws, but do not have one single method or way devised as yet to use the water of this state because irrigation waters have already been filed on to use most of the water that flows down streams. He said that we were going to have to store our water.

He said that he didn't think one or two years would do it, would provide time for adjudication of all waters, but that we can't wait any longer for it to be done. He said that personally, he is a little bit worried about anybody reserving water who is waiting for it to be completed. He said that he thinks the regulations are stifling the efforts of everyone interested in water and that the committee should cut some of the red tape.

He said that he thinks that everyone deserves their share of water, and that the water is the key to everything. He said that he thought some priorities ought to be set, and that past water users shouldn't be denied. He said that without a healthy economy, today's environmental problems could not be solved and tomorrows will be ignored.

Franklin Grosefield, Big Timber, Montana - Rancher. Montana Assoc. of Conservation Districts.

He said that trying to understand the laws is a difficult and frustrating experience, that the laws were new, untested, and in some cases, contradictory. He said that his view was that of the farmers and ranchers. He said that the objects of the permit system were to prevent degradation of the system. He said that there was too much red tape involving permits, and that he thought it could be revised, that there had to be a better way.

He then discussed problems relating to water quality and water rights. In connection with a state water plan, he agreed that it made good sense to use the state's water resources with a good plan, but that we had to know what is there to use. He said that the state was attempting to qualify this by adjudication processes, which was slow and time consuming. He also said that these rights might be subject to Federal rights defined in broad and detailed language.

He said that the state was trying to assign priorities and that independent companies were trying to come in before they were ready. He said that only the moratorium was holding private industry back, and that when the moratorium was called off, the state had better have a comprehensive water plan. He said that the state had better estimate a state plan without knowing quantities because the state needed a state water plan now.

He said that Mont. Assoc. Cons. Dists. did not see a great need for additional legislation for water use. Existing legislation should be evaluated. Is the end worth the cost?

Elmer Schythe, White Sulphur Springs, Montana.

He said that he wanted to discuss the Fox Hills Sands, comes from the Wolf Mountains in Wyoming. Four different sands carry the water. He told of the history of the water with charts and maps, and that the sands no longer carry the water to the extent they used to.

Pat Smith, Northern Plains Resource Council.

He advocated extending the moratorium to protect priority rates, and said that districts were requesting water on a reserved basis, and that the Department of State Lands had requested in-stream flows. He said that a significant amount of water was being requested for use.

He said that it was important that the water reservations be comprehensive enough to survive scrutiny, and testing in the courts. He said that the water law was passed in 1973 and the rules in connection with the water law were passed in March of 1976. He said that the moratorium should be extended because the Department of Natural Resources and Conservation needs sufficient time to review and act on these reservations.

He briefly mentioned there would be hearings, also if litigation on the water reservation process is challenged in the courts, things could go past the moratorium deadline.

He said that concern had already been voiced concerning the priority of water and that needs had to be spelled out.

James Posewitz, Department of Fish and Game.

Submitted written testimony and stated that he upholds the allocation for fish and wildlife. Read from a 1963 law that the state protect wildlife water rights.

He said even though it was hard to work under, they do agree with the water law. Fish and Game would like to be given a use permit for wildlife and like to see the policy of the water act to be extended down into the permit situation so that the affect on the wildlife system could be assessed when a permit was processed.

Department had reserved the water on the Yellowstone for the purpose of maintaining one of the few free flowing systems left on earth.

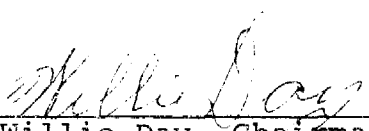
Montana is subject to the same pressures that have destroyed other rivers, and preservation of wildlife depends on legislature and citizens of Montana.

Harry D. Blasing, Forest Res. Council, Missoula, Montana.

He said the industry was concerned about another aspect of water use, of water quality than had been covered. He said that his industry (forest product industries) was forced to abide by (doing so willingly) a contingency of land use regulations and water laws.

He said he was afraid that through adjudication and the extensive laws and regs, the state had lost control of one of the things of use in Mont., also caused problems.

Hearing adjourned 10:30.
P. M.



Rep. Willie Day, Chairman



D. McDuffie, Sec.

WATER SUB COMMITTEE ON JUDICIARY

HEARING

JANUARY 14, 1977 7 P. M.

REPRESENTATIVE WILLIE DAY, Chairman, Water Sub Committee opened the public hearing in the House Chambers January 14, 1977, 7:00 P. M. Chairman Day introduced the following speakers:

VIRGINIA BURNS, 208 Project, Environmental Protection Agency:

Thank you Chairman Day and Representatives of the Committee. I am a member of the 208 Project in the Flathead Valley. 208 Projects are water quality projects that are being conducted throughout the state. There are four in the state of Montana; one in the Flathead, one in the Gallatin area, and two in the energy impacted areas in eastern Montana. Eventually the state of Montana, Department of Health and Environmental Sciences will be doing 208 studies throughout the entire state. So, we feel this is pertinent to all legislators. We have made a film that is really focused towards actually your constituencies. It is trying to point out some of the problems that we have with water quality. At this point, I think the movie will help you understand a little bit more. Mr. John Green, Regional Administrator of the Environmental Protection Agency will be discussing implications of the 208 Project, Thank you.

JOHN GREEN, Regional Administrator, Environmental Protection Agency:

We are responsible for six states; North and South Dakota, Montana, Utah, Wyoming and Colorado. Our main office is in Denver. Our utmost concern is with water pollution. Specifically tonight, we are talking about the 208 Project. 208, as you all know, is a section of the Water Pollution Control Act. This is really a vehicle where the people that are going to be impacted should have something to say about the plans that are going to be made. The 208 Project requires elected representatives to make decisions and to be in on the total development of the plan and implementation of the plan. This is not a plan to just sit on the shelf.

We have put into Montana, area wise, four of them, \$2,245,000 with another \$600,000 intended to cover the areas not covered. In Washington there is another \$127,000,000 for 208, which was held back by OMB (Office of Management and Budget). We expect this to be released.

Most of all, this is what is going to be utilized as far as federal funding later on, to insure that we do have the proper development and that the water quality is preserved throughout the country.

SID GROFF, Director, Montana Bureau of Mines and Geology, Butte:

I can't thank our Chairman enough for finding the money to let us begin the study of the water conditions in the Fort Union coal region. We have put alot of time in on it and we haven't spent all your money yet.

I hope that you all received a copy of the preliminary report and that you at least read the first six pages. We have made some recommendations which we believe will affect the future of the state of Montana.

I am very proud of the state of Montana at this time, in that we have created the best hydrological hydrogeological division in the northwest. For its size, it is considered by many people to be the best in the United States. I would like to say that Mr. Myron Miller is here tonight, he is the chief of that division and the expert on saline seep. The problem with saline seep is probably the biggest environmental problem in the state of Montana today.

We also enjoy a very effective and well working cooperative arrangement with the United States Geological Survey. The chief of the Water Division in Washington has told me that he believes the Montana Cooperative is the model that all of the states in the United States should follow. Representing the United States Geological Survey is Mr. Don Kaufman.

I was very pleased last night with the remarks of the Honorable Arnold Olson. He stressed the importance of water.

I am going to tell you that ground water is the most important part of the water in Montana and here is the reason why. There is a thousand times as much water under the surface of the ground at any given time as there is in all of the creeks, rivers, reservoirs, lakes and the snowbanks. If it were not for ground water, every major stream in the state of Montana would be dry as dust in the dry season of the year. Ground water occurs under what we call confined and unconfined conditions. We are lucky that most of the ground water in Montana is of good quality. Some of it nothing could drink. Some of it is about ten times as salty as sea water and when we get to that problem of the coal slurry pipeline, I would say that I am very willing to ship all the salt water that Alabama wants. If they want to mix coal and salt water they can have it.

At this time, we have not yet had a significant major problem of the over use of ground water. But, as agricultural industry expands and other industry expand, we can say from the results of our studies that we are turning more and more to the use of ground water. The time may come when we are threatened with the over use in a given basin. We are at a period of time in this state when we can prevent over use, but in order to prevent it, we must continue to study and collect data, computerize it, get it in the state files and agencies. The Bureau of Mines and Geology, Department of Natural Resources, the United States Geological Survey and others must work together towards what I like to call the optimum use of ground water resource and you have probably noticed that the Department of Resources has filed the first suit over the use problem in an artesian basin. A decision that comes out of any suit of this type must be based on data just collected in the area and interpreted by the hydrogeologists so that they can project what the optimum use is and from these factors the judge in the case will be able to determine what is right and what is wrong.

There is another way that we can proceed and that is the declaration of an area of control ground water use. If such an area is declared by the inhabitants of the area, once again, it is an agency like the Bureau of Mines and Geology and the United States Geological Survey, who must go in there and get the data. They must make all interpretations so that the Department of Natural Resources can regulate the water use. The point is that we don't over use it, but we use it to an optimum. The results being that the majority of citizens will benefit. Montana must avoid the mistakes of other states as Nebraska, Kansas, Texas and New Mexico who found valuable resources of ground water, such as we have today, and they began to pump it and before they had state controls they continued to pump and in places the level of some of these under ground reservoirs has fallen as much as 1200 feet. If it falls 1200 feet, that probably represents a recharge factor from precipitation, run off, etc., of hundreds of years. We cannot afford to do that in Montana. In eastern Montana, we have problems of water quality being affected by saline seep.

These are the possibilities and actualities of contamination in saline waters from mine disposal and other type of contamination. We studied these and we reported to the legislators in summary detail. We are fortunate in Montana that the big rush to ground water has not yet occurred. It is now in the process of occurring. The reason is because the economics of agriculture and other industries reached the point where they can pay more for water and still make an honest dollar. I think what I would like to point out is, research and study is vitally necessary and it is going to take money. If we don't do the research, plan ahead and take care of these problems, it is going to cost the citizens of the state of Montana a thousand times more in terms of dollars than it would have if adequate research continuing programs were extended.

Your Mines and Geology and their Geological Division in its work with the United States Geological Survey has resulted in the completion of a number of arial studies. All the data is on file for use by any other agency or any citizen in the states of Montana, including federal agencies. We code all our data and it is avaiable.

I am very happy that we will be working with the Department of Natural Resources in solving these problems. I think the future looks good. All in all, Montana here at the headwaters of the Yellowstone and Missouri and Columbia systems is really a rather unique place. Some people in the state felt, as geologist, that I am overly interested in development. I do not, by any stretch of the imagination, represent industry. My job is to protect the interests of the people of Montana, but at the same time, I want to tell you people that Montana is a storehouse of mineral resources and ground water. If we plan ahead and we utilize these resources for the benefit of the people of Montana, I anticipate no problems with unemployment or resession for at least the next thirty years.

JOHN ORTH, Department of Natural Resources.

I have been involved in public service for the past ten years. It is my intentions if I am appointed director of the Department of Natural Resources to continue in public service.

I have discussed with Mr. Doney, his presentation and agree. I am in favor of the moratorium. My priority position is, that I look for the legislator to set these priorities; however, my feelings are that agricultural and urban use are high priorities which come before industry.

TED DONEY, Chielf Counsel, Department of Natural Resources,

Introduced staff. Mr. Doney briefly mentioned the fuctions of former Boards and Departments in connection with water and said his department is now working with the Water Use Act of 1973.

He talked about the need for repair for dams put up in the 1930's and that his department is also in charge of the weather modification statutes, but that there is not much activity in this area in the State at this time.

He said the State has many problems and briefly went over some of them as follows:

1. Water marketing in the Fort Peck area.
2. Yellowstone Compact.
3. Columbia Interstate Compact (one of the books is out-dated, but is going to be renegotiated).
4. Discussions in connection with a Missouri River Basin Compact (he said that he thinks this should be strongly look into).
5. Federal Programs, such as water permitting procedures, duplication of effort in this area, separation of authority on a state level.
6. Not enough coordination of effort between Federal, state and local entities.
7. Impact on water from coal slurry pipelines (he said he is going to introduce a bill to study coal slurry pipeline impact).
8. Thinks the state needs groundwater studies to help with water systems in the state.
9. Mentioned that the Federal moratorium was over in 1978, and that the State moratorium in March, and wanted the State moratorium extended.
10. Stream gaging; and,
11. Poplar River situation.

He said that the areas of most concern to the department were:

1. Water Use Act.
2. Mandate of the Water Use Act that his department adjudi-

Doney cont.

cate water rights. He then discussed the problems faced by the department on the Powder River in connection with their effort at adjudication and said that 70% of the declaration of rights were undocumented, necessitating extensive field work.

He said that his department had figured that it would take \$220.00 per square mile to adjudicate water rights, and within the present time frame, they are looking at adjudication taking 100 years at a cost of \$50,000,000 to implement the program. He estimated that there were one-half million water rights in the state.

Advised sub committee of alternatives:

- a. Do not adjudicate. He says that although this was an alternative, that we must know prior water rights to issue priorities,
- b. Streamline the existing system by reducing detail, to accept small filings at their face value without field work, and that this might save about 30%,
- c. Require that people claiming water rights obtain certification by an engineer or land surveyor and that this would cost the landowner money, but at least they would be accurate,
- d. Require that everyone in the state make declarations within five years, subject to eventual adjudication in the courts,
- e. Adjudicate the water rights administratively and not through the courts (already discussed and defeated)
- f. Adjudicate the water rights faster by spending more money on the process.

He then explained that he was not advocating any of these alternatives at this time, but advising the committee of possible alternatives.

3. Water permit processing is slow and additional staff has been hired and trained, and the process is speeding up. He said that since the water rights were not established and therefore his department did not feel they could turn down applications, but that there was a danger that new permits would interfere with existing water rights.

4. He then discussed the three field offices put in the state, but said that they needed more, that it was extremely difficult to deal with these problems from a Helena location.

5. He complained about the ignorance of the law by people in the state, especially with citizens appropriating water without permits, and that his department had not brought charges; but were probably going to begin doing so, and that the offense was punishable as a misdemeanor.

6. He then discussed the concept of water reservation on the Yellowstone, and that this was a new concept in Montana and in the Country.

7. He thinks the decisions made in the near future by the Board on these reservations will have a greater impact on the state than Colstrip, the Board has tremendous authority in this area.

8. He said that we need a preference system, also more research (first). He indicated an alternative would be to make a preference system for the Yellowstone Basin only, instead of for the entire state. He didn't advocate a percentage allocation of priority, since he felt it would be difficult hydrologically and thought a system of priorities would be more workable.

9. Then he discussed another big problem which is Indian water rights. He said that the Indians were taking the position that Indian water rights should be adjudicated by the Federal courts, and his department and the state were taking the position that they should be adjudicated in the state, and so they will need extensive funds to defend the state in the lawsuits pending in connection with this problem, but that money for this was taken out of their budget.

10. He said that the state water plan was another area of concern to his department, and that they were drafting water plans for river basins in the state. He said that this was a large problem, a high priority problem, and stated that his department lacked funds to address the problem effectively.

11. He said that state participation was another problem, and that sometimes they were accused of not putting up enough staff for this problem, or money for that program, but that they were short of staff and funds, and,

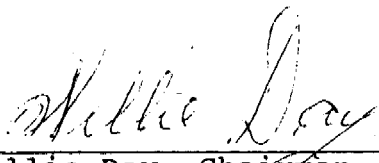
12. He said that water development was another issue because people felt Montana should be building dams and other projects. He said that his department would need additional money to plan and complete preliminary engineering studies before bonds could be sold and projects built. He stated that there were some small watershed projects that have been studies, but there had been a lack of local interests and state interest in the projects.

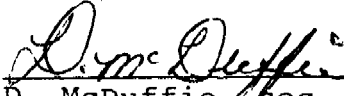
He then again discussed the Renewable Resource Development Program, and talked about the bill in the Senate, to kill it.

He then closed and expressed his willingness to cooperate fully with the committee.

A question answer period then followed.

Hearing adjourned 10:30 P. M.


Rep. Willie Day, Chairman


D. McDuffie, Sec.

WATER SUB COMMITTEE ON JUDICIARY

January 20, 1977 Rm 436

The Water Sub Committee members and Chairman met on January 20, 1977, Rm. 436, 10-12 A. M. All members present except Rep. Halvorson absent.

Chairman Day introduced Mr. C. C. Bowman, Agricultural Engineer, Bozeman MSU.

Mr. C. C. Bowman: Water law is a very complicated field, but first it begins with constitutional law. We have our Federal Constitution. Our Federal Constitution does not specifically say anything about the control over water. The United States Congress has taken control by navigation, interstate commerce and the general welfare of the people. They have made many laws under this particular authority.

We have a constitutional law for each state. Each state having the option of working the administration and control of their own water rights.

Statutes, legislative law, gives the directives for the state. These in turn, must fit under the constitutional laws. Water law is case law. Montana is not an island, decisions made in other states play a very important part in the decisions that are made here. We must protect Montana water for the use of the people in Montana.

My main concern, right now in the state water picture, is to speed up the adjudication process.

Montana should have a POLICY STATEMENT in their constitution. 'The policy of the state of Montana is to develop its water resources for the maximum beneficial use' 89-865, (Pink Book). This is very important to the people of Montana to develop their river basins, particularly their ground water. Montana has more water under ground than they have on the surface. This would give the direction for the DNA to make judgment in the issuance of permits for drilling, whereby they can match the yeild to the recharge. Right now, they have to make decisions with a minimum of direction. California, 1929, made this amendment to their constitution and many other states have followed.

The policy statement that we need in the constitution is one that I asked for at the constitutional convention and that is a policy of PREFERRED USE. I believe the first use of Montana water should be 1. MAN & BEAST, 2. FOOD & FIBER, 3. INDUSTRY, and 4. RECREATION. It is very important, because at the present time, if two requests come in from a given area, one for irrigation and one for industry, it would be very difficult for the DNR to make a judgment. It is up to you to decide, do you want water for man and beast first and then industry or do you want it for food and fiber or what do you want it for? I believe there should be an amendment to give the direction for proper judgment. Those are the only two items that I had in mind as far as constitutional amendments are concerned. The rest of them deal with statutes that I think are very important. I feel that we need to establish

WATER RIGHTS JUDGE. Similar to the Workman's Compensation Division. Many people will disagree with me, but I am going to explain why I believe this. Once Montana water is adjudicated, this position would not necessarily be required. However, in the next ten to twelve years there must be some uniform type of decision making. I find that there are few judges who truly understand water law. Adjudication of water and water right disputes must be a team effort. In the establishment of a water judge, he must work in the same framework as the district court judge. The judge must preside over all water cases that involve settlement of priority and size, whether they are a full scale adjudication or not. This could be similar to the Workman's Compensation judge.

Under the present law the DNR is obligated to bring about action for adjudication and in many areas we are having disputes settled. But, we need to make the adjudication of water rights a function of the district court as well as the DNR, so that some of these decisions that are being made can stand without having to go over them a second and third time. The allocation of water must be within the legal duty of water.

Another point that I feel is very important, is that we should have a statute in regard to diversion. Livestock use being recognized as a means of diversion. This is necessary to control rights which have never been perfected but are on the books or rights that have been perfected and have been separated from the land and are no longer being used and we have many of them. People are living with the thought that they have money in the bank because they have a water right and it is not being used, but this is not true. A water right is only that which they can put to a beneficial use. We need a statute to establish a limit of two to five years for the filing or claiming of a use right. Again we have many use rights and I think the use rights at the present time are causing a great deal of delay down on the Powder River. At the present time the DNR is required to make a considerable survey and I think there should be a limitation on this so the people have the right to file a claim to these rights if they have them.

The next thing that I think is important to speed up the adjudication of water is, that we should specifically state the duties or the limit of duties for the DNR in the adjudication proceedings. More responsibility should be placed upon the land owner to file a correct description of lands and the use of the water.

Chairman Day asked for comments on a proposed bill from the Montana Fish and Game Department in regard to retaining water rights but letting waters run free.

Chairman Day introduced Mr. Doney, who commented on proposed bill and explained that the Fish and Game wants to purchase rights but leave waters in the stream. Chairman Day read change, Doney said it wouldn't apply to the Yellowstone now.

Rep. Dussault made the motion to send it back to the Mont. Fish and Game Department.

Rep. Ellison, seconded the motion.

Motion passed.

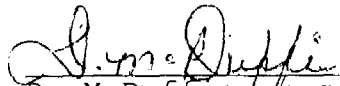
Rep. Dussault made the motion that the committee should not sponsor the Intake Water Company bill.

Rep. Roth seconded. Motion passed.

Rep. Dussault made the motion that the committee not sponsor any bills from outside the committee until the committee has had full discussion on the bill. Rep. Ellison seconded. Motion passed.

Meeting adjourned.


Rep. Willie Day, Chairman


D. McDuffie, Sec.

Select Sub Committee on Water

WATER SUB COMMITTEE ON JUDICIARY

February 15, 1977

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The House Water Sub Committee hearing was called to order in room 436, 10:00 A. M., Chairman Day presiding. All members were present with the exception of Representative Halvorson, absent.

The committee took executive action in connection with the introduction of a committee bill in regard to adjudication, so that the bill could be printed and posted for hearing. The bill came out of the Water Sub-Committee's sub-committee on Adjudication, which was appointed as a result of DNR's recommendations. This action was moved by Representative Ramirez, seconded by Representative Lory.

It was mentioned that the proposed bill is in the Legislative Council being put in the correct form, and that the Adjudication Sub-committee had distributed about a dozen copies to Senators to work out differences in advance of the introduction of the bill.

It was also mentioned that the bill will establish a Water Judge and will require water owners to file their rights within four years and will allow a one-year buffer period.

It is estimated by the Adjudication Sub-committee that the bill will be printed in the next few days, and will come up for hearing about next Tuesday, 2/22/77.

The water Sub-committee took executive action in connection with the introduction of a committee bill in regard to preferences.

Representative Dassinger explained that the Preference Sub-committee had so many mixed feelings that they found the task impossible, and that a bill addressing the subject of preference for water would be as long as HB 122. He said that was why they supported HJR 23, to have a 2-year study done, and had drawn up a loose piece of legislation to be in effect in the interim.

There was discussion concerning the proposed bill (copy attached) and it was decided to amend same to remove "hydropower" and to add "for the State of Montana" to Sec. 2, so that a domestic use for states other than Montana would not have a higher priority than Montana domestic or municipal.

Hearing opened on House Joint Resolution 22. Representative Day, Sponsor. He turned the explanation of this legislation over to Orrin Ferris.

Orrin Ferris, Department of Natural Resources. Said that this resolution was to give the DNR some guidance in connection with the possibility of building joint storage facilities that would serve both Wyoming and Montana on the Tongue and Powder Rivers. Resolution suggests that it might be beneficial to start discussions with potential users to establish a market for water from that area, he said. Also, that DNR wanted to carry out studies on water quality, saline seep and the affect of

water storage on the area. He said that they also wanted to look at the possibility of using aqueducts instead of dams.

He said that the department wasn't requesting additional funds for these studies, but asked the legislature to establish priorities. He said that by passing this resolution, the legislature would let the DNR know that they felt these were high priority items.

There were no proponents or opponents.

During the question and answer session, Rep. Kimble asked why Indians were not included in the bill as being a party to the study. Orrin Ferris answered that the department would be willing to add a statement to that affect, to study the storage possibility with the Indian tribes. Rep. Kimble said that he was constantly hassling with the DNR in this matter and he didn't understand why they didn't include all the people who owned water. Kimble further stated that he would go along with an amendment. Chairman Day asked Kimble to make a note of that, so that they could amend the bill during a later executive session.

Rep. Curtiss asked why there was no fiscal note. Orrin Ferris said that they did not need additional funding but that the resolution was only to direct the DNR to do the studies.

Hearing closed on HJR 22.

Hearing opened on House Bill #759. To provide that the local political subdivision shall reimburse the DNR for its costs in administering and enforcing floodplain and floodway minimum standards where the political subdivision has failed to do so and to clearly authorize a political subdivision to adopt local land-use regulations in designated floodplains and floodways after the statutory 6-month deadline.

Representative Day and Bengston asked Orrin Ferris, Department of Natural Resources to explain the bill. Orrin Ferris said that this was a simple bill in connection with the existing Floodway Management Act, and that the intent of the bill was to allow them to keep track of their costs and to assess same on the local groups.

He said that it also provided that the local group (even after the 6-month period) could still come in and take over their program. He said that they had trouble with Ravalli and Cascade Counties taking over their programs, but that they probably will take over the regulatory process, but that the DNR wanted the bill passed to cover future situations.

There were no proponents or opponents.

Representative Ellison, during the question and answer session, asked if this concerned recovery of past money spent by the DNR. Orris Ferris said no, only money spent after the bill was passed was covered.

There was concern expressed by several committee members, Bengston and Roth, that the bill was unnecessary, to which Mr. Ferris replied that the field plan delineation program only had been adopted in 8 counties

to date, and that it will be expanded in the future. He said that in all cases where the program is implemented, they felt it should be regulated by local entities, rather than the DNR.

Representative Nathe asked if this was zoning of floodplains. Orrin Ferris said yes, and that they had cases presently where people were building in violation of the zoning. Orrin said the program was usually enforced on a local level. He said that this, combined with the Federal Field Program, was designed to get people out of floodplains. Representative Nathe said that many people were of the opinion that they should be allowed to build where they wanted, and just be flooded out and too bad. Mr. Ferris replied that that approach would only work if the Federal government also adopted it.

Hearing closed on House Bill #759.

Hearing opened on House Joint Resolution 23. Representative Day, Sponsor. Would direct the appropriate Legislative Standing Committee to complete a study of establishing a preference system of water rights in Montana.

Representative Day referred to Orrin Ferris, Department of Natural Resources, to explain the bill.

Orrin Ferris, Department of Natural Resources. He said that the Water Sub-committee had considered many different types of preferred uses, but that a study was the method the DNR preferred to take.

He said that the resolution would call for a 2-year study. He said the DNR felt that some aspects of the problem were not being considered and that a 2-year study involving several state departments would be the only adequate way to approach the problem.

There were no proponents or opponents.

Question and Answer period. Representative Hand asked what was meant by "preference". Ferris said that a sub-committee of the Water Sub-committee had been working on a preference system. Ferris went on to say that this would allow one type of use to predominate over another, regardless of the date of the application and that this would be part of the statute.

Representative Ellison asked if the Board of Natural Resources didn't need some guidance before the meeting of the next Legislature. He asked if it wouldn't be a mute question by the next session, at least on the Yellowstone. Ferris said that under the moratorium, that all uses that are reservations come before those suspended by the moratorium. Representative Ellison said that he still felt the Yellowstone needed some direction before that time. Representative Dassinger obtained permission to answer, and said that the Preference Sub-committee had decided that a study should be made to make final decisions because the matter was so intricate. He said a bill introduced on the subject would have to be as long as HB 122 to even provide a temporary list of preferences which would be in effect until the study was completed and implemented.

WATER SUB COMMITTEE ON JUDICIARY

February 18, 1977

Executive Meeting

Executive meeting for the Water Sub Committee was called for Friday February 18, 1977; 9:15 A. M. Room 436, Judiciary. Chairman Day presiding, all members present with Representative Kimble and Nathe being excused.

Action was taken on House Joint Resolution #23. "Do Pass" motion was made, seconded and passed.

Action was taken on House Bill #664. Ted Doney was asked to explain this bill to committee members. Mular questioned the permit system. Doney went into more detailed explanation in regard to same.

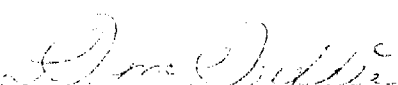
Representative Bengston made a "Do Not Pass" motion, seconded by Curtiss. Representative Dassinger made a motion to amend. Substitute motion made by Ramirez. Dassinger made a motion for all motions pending. Bengston said she was concerned about the rights of the people and thought great thought should be considered before any action taken. She also stated that this bill was too rigid. She was supportive of Dassinger's proposed earlier amendment.

Chairman Day appointed a committee to further study the bill and bring back a recommendation. Committee consisted of Dassinger, Chairman, Mullar and Roth.

Next bill acted upon was House Bill #759. Representative Mular, "Do Pass" motion, seconded by Representative Lory. Representative Curtiss, "Do Not Pass", seconded by Representative Roth. Roll call vote failed, giving "DO PASS" recommendation to Judiciary.

Meeting adjourned 10:00 A. M.


Rep. Willie Day, Chairman


D. McDuffie, secretary

JUDICIARY COMMITTEE

EXECUTIVE SESSION
February 19, 1977

The House Judiciary Committee went into executive session at 8:30 a.m. in room 436 of the Capitol Building, Helena, Montana, on Saturday, February 19, 1977. Chairman Scully presided. All members were present.

HOUSE BILL #92:

REPRESENTATIVE DUSSAULT moved to take it off the table. The motion carried with the vote unanimous.

REPRESENTATIVE HOLMES moved "do not pass".

The motion carried with Representative Teague voting "no".

HOUSE BILL #343:

REPRESENTATIVE CONROY moved the adoption of the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE CONROY moved "do pass as amended".

The motion carried with Representative Dussault and Courtney voting "no". A copy of amendments is attached.

HOUSE BILL #363:

REPRESENTATIVE CONROY moved the adoption of the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE ROTH moved "do pass as amended".

The motion carried with the vote unanimous. (copy attached)

HOUSE BILL #455:

REPRESENTATIVE KEYSER moved the adoption of the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE KEYSER moved "do pass as amended".

The motion carried with the vote unanimous. (copy attached)

HOUSE BILL #411:

REPRESENTATIVE CONROY moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #497:

REPRESENTATIVE KEYSER moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #749:

REPRESENTATIVE RAMIREZ moved "do not pass".

The motion carried with Representatives Day and Holmes voting "no".

HOUSE BILL #738:

REPRESENTATIVE DUSSAULT moved to amend. The motion carried.

REPRESENTATIVE HOLMES moved "do pass as amended". The motion carried with the following representatives voting "no". Representatives Roth, Seifert, McLane, Ramirez, Teague and Conroy.

EXECUTIVE SESSION
HOUSE JUDICIARY COMMITTEE
February 19, 1977

HOUSE BILL #739:

The sub-committee reported on proposed amendments. The sub-committee consisted of Representatives Keyser, Seifert and Baeth. The proposed amendments will be presented to the committee at a later date.

HOUSE BILL #742:

REPRESENTATIVE RAMIREZ moved "do pass".

The motion carried with the following voting "no". Representatives Teague, Keyser, Seifert, Roth, McLane and Conroy.

HOUSE BILL #758:

REPRESENTATIVE KEYSER moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #763:

REPRESENTATIVE RAMIREZ moved the adoption of the proposed amendments compiled by the sub-committee. The motion carried.

REPRESENTATIVE RAMIREZ moved the bill "do pass as amended".

The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #59:

REPRESENTATIVE RAMIREZ moved "do pass".

The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #63:

REPRESENTATIVE HOLMES presented a copy of the proposed amendments from the sub-committee and moved their adoption. The motion carried.

REPRESENTATIVE HOLMES moved "do pass as amended".

The motion carried with the vote unanimous.

HOUSE BILL #533:

REPRESENTATIVE RAMIREZ moved the adoption of the proposed amendments from the sub-committee. The motion carried.

REPRESENTATIVE KEYSER moved "do pass as amended".

The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #23:

REPRESENTATIVE DAY reported from the water sub-committee and moved the adoption of the committee report. The motion carried with the vote unanimous.

HOUSE BILL #759:

REPRESENTATIVE DAY reported from the water sub-committee, and moved the adoption of the committee report "do pass". The motion carried with the vote unanimous.

COMMITTEE ON LOCAL GOVERNMENT

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
2	1-17-77	1-24-77	1-24-77				1-24-77		
124	2-10-77	3-28-77 2-23-77	3-28-77 3-7-77						3-28-77 3-7-77
314	2-10-77	3-14-77	3-16-77				3-16-77		
238	2-14-77	3-9-77	Judiciary						
323	2-16-77	3-11-77	3-11-77				3-11-77		
459	2-17-77	3-4-77	3-4-77				3-4-77		
361	2-17-77	3-7-77	Without Recommendation 3-7-77						
521	2-21-77	3-18-77	4-6-77					4-6-77	
537	2-21-77	3-23-77	3-28-77				3-28-77		
638	2-21-77	3-4-77	3-28-77 3-4-77 Without Recommendation						
195	2-22-77	3-30-77	4-7-77				4-7-77		
211	2-23-77	3-8-77							
675	2-23-77	3-9-77	Without Recommendation 3-10-77						
720	2-23-77	3-3-77	3-4-77						3-4-77
677	2-25-77	3-18-77	3-18-77				3-18-77		
748	2-25-77	3-25-77	3-28-77						3-28-77
759	2-25-77	3-7-77	3-10-77 3-7-77					3-10-77	3-7-77

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

March 7, 1977

The meeting of the Local Government Committee was called to order by Chairman McCallum on March 7 at 9:34 A.M. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present.

The following visitors were present: O. G. Benson; Al Sampson, Missoula City Study Commission; Arlene Loble, City of Helena; Peter Koehn; Charles Parrett, Department of Natural Resources; Gary L. Spaeth, Department of Natural Resources.

CONSIDERATION OF HOUSE BILL 759: Representative Bengtson, District 59, presented House Bill 759 to the Committee. Gary Spaeth, Department of Natural Resources testified in support of House Bill 759.

Steve Turkiewicz, Montana Association of Counties, opposed House Bill 759 stating local governments may not have the resources to carry out the enforcement. Mr. Turkiewicz feels it is unnecessary interference by the state with local affairs.

CONSIDERATION OF HOUSE BILL 361: Representative Day, District 54, Sponsor of House Bill 361, stated the bill is a resolution to be presented to the voters in 1978.

Opponents. Peter Koehn, Missoula, read a letter from John Toole (attached) to the committee opposing House Bill 361. Mr. Koehn opposed House Bill 361 (attached) and proposed amendments (attached) to the bill. Arlene Loble, City of Helena, opposed House Bill 361. Ms. Loble does not feel Representative Day's amendment is necessary. Betty Boettger opposed House Bill 361 (attached). Darlene Grove, League of Women Voters, opposed House Bill 361.

House Bill 124. Senator Thiessen moved House Bill 124 be given a "Be Not Concurred In" recommendation. Senator Dunkle seconded the motion. Motion carried.

House Bill 759. Senator Lockrem moved House Bill 759 be given a "Be Not Concurred In" recommendation. Senator Story seconded the motion. Motion carried.

House Bill 361. Senator Lockrem moved House Bill 361

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

March 10, 1977

The meeting of the Local Government Committee was called to order by Chairman McCallum on March 10 at 10:04 A.M. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present.

House Bill 759. Proposed amendments (attached). Senator Dunkle moved to adopt the proposed amendments to House Bill 759. Senator Lockrem seconded the motion. Motion carried unanimously. Senator Watt moved House Bill 759 be given a "Be Concurred In As Amended" recommendation. Senator Dunkle seconded the motion. Motion carried unanimously.

House Bill 675. Senator Lockrem moved House Bill 675 be given a "Be Not Concurred In" recommendation. Senator Dunkle seconded the motion. The Chairman called for a roll call vote. House Bill 675 went out of committee with no recommendation.

House Bill 238. Senator Lockrem moved House Bill 238 be given a "Be Not Concurred In" recommendation. Senator Dunkle seconded the motion. Senator Thiessen made a substitute motion to work on amending the bill. Senator Watt seconded the motion. The Chairman called for a roll call vote. The motion carried. The Chairman placed the bill in a sub-committee consisting of Senator Lockrem, Senator Watt and Senator Thomas.

ADJOURN: The meeting adjourned at 10:57.


Senator George McCallum, Chairman

AMENDMENTS TO HB 759

(blue copy)

1. Amend title, page 1, line 6.

Following: "ENTITLED: "AN ACT"

Strike: "AN ACT"

2. Amend title, page 1, lines 7 through 11.

Following: "To"

Strike: the remainder of line 7 and lines 8 through 11 in
their entirety

3. Amend page 1, section 1, lines 20 and 21.

Following: "regulations"

Strike: "--payment of department expenses by political subdivision"

4. Amend page 4, section 1, lines 22 through line 2 on page 5.

Following: "(4)"

Strike: lines 22 through "department." on line 2 on page 5.

STANDING COMMITTEE REPORT

March 10, 19 77

MR. President

We, your committee on Local Government

having had under consideration House Bill No. 759

Respectfully report as follows: That House Bill No. 759,

third reading bill, be amended as follows:

1. Amend title, page 1, line 6.

Following: "ENTITLED: "AN ACT"

Strike: "AN ACT"

2. Amend title, page 1, lines 7 through 11.

Following: "To"

Strike: the remainder of line 7 and lines 8 through 11 in their entirety.

3. Amend page 1, section 1, lines 20 and 21.

Following: "regulations"

Strike: "--payment of department expenses by political subdivision"

4. Amend page 4, section 1, lines 22 through line 2 on page 5.

Following: "(4)"

Strike: lines 22 through "department." on line 2 on page 5

~~XXXXXX~~

AND AS SO AMENDED, BE CONCURRED IN

HOUSE BILL NO. 759

INTRODUCED BY MONT. WATER SUB. COMMITTEE, DAY, CHAIRMAN

REQUESTED BY

THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT AN ACT TO AMEND SECTION 89-3504, R.C.M. 1947, TO PROVIDE THAT THE LOCAL POLITICAL SUBDIVISION SHALL REIMBURSE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ITS COSTS IN ADMINISTERING AND ENFORCING FLOODPLAIN AND FLOODWAY MINIMUM STANDARDS WHERE THE POLITICAL SUBDIVISION HAS FAILED TO DO SO AND TO CLEARLY AUTHORIZE A POLITICAL SUBDIVISION TO ADOPT LOCAL LAND-USE REGULATIONS IN DESIGNATED FLOODPLAINS AND FLOODWAYS AFTER THE STATUTORY 6-MONTH DEADLINE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 89-3504, R.C.M. 1947, is amended to read as follows:

"89-3504. Program for delineation of floodplains and floodways -- land-use regulations ~~---payment of department expenses by political subdivision.~~ (1) (a) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into

arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for such acquisition.

(b) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include, but not be limited to, the following:

(i) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(ii) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(iii) encouraging local dissemination of information concerning surveys, studies, and investigations, so that interested persons will have an opportunity to bring relevant data to the attention of the department.

(2) When sufficient data have been acquired by the department, the board shall establish, by order, after a

1 public hearing, the designated floodplain within which a
 2 political subdivision may establish land-use regulation.
 3 When sufficient data have been acquired, the board shall
 4 establish, by order, after a public hearing, the designated
 5 floodway within which a political subdivision may establish
 6 land-use regulation. These designations shall be based upon
 7 reasonable hydrological certainty. When the designated
 8 floodplain or the designated floodway has been established,
 9 the department shall furnish this data to officials of the
 10 political subdivision having jurisdiction over those areas
 11 together with a map outlining the areas involved, a copy of
 12 this act, adopted rules of the board, and suggested minimum
 13 standards adopted by the board. These standards and rules
 14 shall reflect gradations in flood hazard based on criteria
 15 as outlined in section 89-3507(2). In adopting these
 16 standards, and rules, and ~~regulations~~, the board shall
 17 consider local input from the affected political
 18 subdivisions. The department shall record all designated
 19 floodplains or designated floodways established by the board
 20 in the office of the county clerk and recorder of each
 21 county in which those floodplains or floodways are found.
 22 The board may alter the floodplains or floodways at any
 23 later time, by order, after a public hearing if a
 24 re-evaluation ~~reevaluation~~ of the then available flood data
 25 warrants ~~warrant~~ it. Notice of a hearing or order of the

1 board establishing or altering the floodplains or floodways
 2 shall be given by publishing the notice once each week for
 3 ~~three--(3)~~ consecutive weeks in a legal newspaper published
 4 or of general circulation in the area involved, the last
 5 publication of which shall be not less than ~~ten--(10)~~ days
 6 prior to the date set for the hearing or the effective date
 7 of the order.

8 (3) Upon transmittal of the floodplain information to
 9 officials of a political subdivision, the political
 10 subdivision has ~~six--(6)~~ months from the date of transmittal
 11 to adopt land-use regulations which meet or exceed the
 12 minimum standards of the board. If within the ~~six--(6)~~ month
 13 ~~6-month~~ period the political subdivision has failed to adopt
 14 the land-use regulations, the department shall enforce the
 15 minimum standards within the designated floodplain or the
 16 designated floodway as established by the board under
 17 subsection (2) of this section, and no artificial
 18 obstruction or nonconforming use ~~shall~~ may be established by
 19 any person within the designated floodplain or the
 20 designated floodway, unless specifically authorized by the
 21 board.

22 ~~(4) The department shall maintain a record of all its~~
 23 ~~administrative costs to administer and enforce the minimum~~
 24 ~~standards within the designated floodplain or floodway, and~~
 25 ~~the political subdivision having jurisdiction over the area~~

~~shall reimburse the department for such costs after billing~~
~~by the department.~~ A political subdivision which has failed
to adopt land-use regulations which meet or exceed the
minimum standards of the board within the 6-month period may
subsequently adopt such regulations and, if approved by the
board, they shall be effective within the designated
floodplain or floodway and administered and enforced by the
political subdivision.

{5} When necessary for compliance with federal flood
insurance requirements, the board may shorten the ~~six-~~{6}
month ~~6-month~~ period upon notification to the political
subdivision and publication of a notice thereof in a
newspaper of general circulation in the affected area once a
week for ~~three-~~{3} consecutive weeks."

-End-